

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

BARDY DIAGNOSTICS, INC., )  
Plaintiff, Counter-Defendant )  
v. ) C.A. No. 24-1355 (JDW)  
IRHYTHM TECHNOLOGIES, INC., )  
Defendant, Counter-Plaintiff. ) **JURY TRIAL DEMANDED**

**DEFENDANT IRHYTHM TECHNOLOGIES, INC.’S UNOPPOSED MOTION FOR  
LEAVE TO FILE SECOND AMENDED COUNTERCLAIM AND  
ANSWER TO FIRST AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Defendant iRhythm Technologies, Inc. (“iRhythm”) hereby moves the Court for leave to file its Second Amended Counterclaim and Answer to Plaintiff Bardy Diagnostics, Inc.’s (“Bardy”) First Amended Complaint. Consistent with an agreement of the parties to moot the need for motion practice on the pleadings, iRhythm’s Second Amended Counterclaim and Answer (1) withdraws iRhythm’s previously asserted collateral estoppel defense, (2) amends the unenforceability defense to remove inequitable conduct and redesignate the pleaded facts as an unclean hands defense, and (3) includes an additional counterclaim for recently issued U.S. Pat. No. 12,274,554 (the “’554 patent”).

iRhythm’s proposed Second Amended Counterclaim and Answer and related exhibits are attached as Exhibit A to this motion. A redlined version, showing differences between iRhythm’s First Amended Counterclaim and Answer (D.I. 19) and the proposed Second Amended Counterclaim and Answer, is attached as Exhibit B. A proposed form of order is attached hereto.

iRhythm first indicated its intent to amend its counterclaim to include a count for infringement of claims of then-allowed U.S. Pat. Appl. No. 18/936,888 to Bardy by letter (dated March 21, 2025), and to the Court in the parties’ Joint Rule 26(f) Report (submitted March 27,

2025). The amendment was also discussed during the parties' pretrial conference on April 3, 2025. By joint letter to the Court dated April 11, 2025, the parties memorialized their agreement to the proposed revisions embodied in the Second Amended Counterclaim and Answer (including the additional counterclaim for infringement of the claims of the allowed application). (D.I. 33.) The allowed application issued as the '554 patent on April 15, 2025.

Federal Rule of Civil Procedure 15(c) provides that "the court should freely give leave [to amend] when justice so requires." Courts should grant leave absent "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the amendment, etc." *Joao Bock Transaction Sys., LLC v. Jack Henry & Assocs., Inc.*, 292 F.R.D. 167, 170 (D. Del. 2013) (internal quotation marks and citation omitted).

iRhythm's proposed amended pleading is timely: it is made less than two weeks following issuance of the '554 patent, and well before the June 2, 2025 deadline to amend or supplement the pleadings. (D.I. 29 ¶ 3.) The parties will not suffer undue prejudice or delay because of the amendment. iRhythm has made its intention to assert infringement of the claims of the application that issued as the '554 patent known since March. Further, the parties' initial invalidity contentions are not due until July 24, 2025. (*Id.* ¶ 8.D.) iRhythm's amendment is not the product of bad faith, dilatory motive, and is not futile. It is predicated on (1) agreement among the parties to avoid motions practice concerning defenses and (2) a good-faith belief that the claims of the '554 patent are infringed. Accordingly, iRhythm respectfully submits that its Motion should be granted.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Lucinda C. Cucuzzella*

OF COUNSEL:

J. David Hadden  
Allen Wang  
FENWICK & WEST LLP  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

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Brian P. Egan (#6227)  
Lucinda C. Cucuzzella (#3491)  
1201 North Market Street  
P.O. Box 1347  
Wilmington, DE 19899  
(302) 658-9200  
began@morrisnichols.com  
ccucuzzella@morrisnichols.com

Melanie L. Mayer  
FENWICK & WEST LLP  
401 Union Street, 5th Floor  
Seattle, WA 98101  
(206) 389- 4510

*Attorneys for Defendant*

Robert Edward Counihan  
Daniel Rabinowitz  
FENWICK & WEST LLP  
902 Broadway, 18th Floor  
New York, NY 10010  
(212) 430- 2600

April 25, 2025

**RULE 7.1.1 CERTIFICATE OF COMPLIANCE**

I hereby certify that counsel for the parties, including lead and Delaware counsel, discussed the subject of the foregoing motion. Plaintiff has advised Defendant that, while it disputes that Defendant is entitled to the relief sought in the Second Amended Counterclaim and Answer, it does not oppose Defendant's motion for leave to file a Second Amended Counterclaim and Answer.

*/s/ Lucinda C. Cucuzzella*

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Lucinda C. Cucuzzella (#3491)

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Plaintiff, Counter-Defendant )  
v. ) C.A. No. 24-1355 (JDW)  
IRHYTHM TECHNOLOGIES, INC., )  
Defendant, Counter-Plaintiff. )  
                                ) **JURY TRIAL DEMANDED**

**[PROPOSED] ORDER GRANTING DEFENDANT  
IRHYTHM TECHNOLOGIES, INC.'S UNOPPOSED MOTION FOR LEAVE TO FILE  
SECOND AMENDED COUNTERCLAIM AND ANSWER  
TO FIRST AMENDED COMPLAINT**

WHEREAS, Defendant iRhythm Technologies, Inc. has moved for leave to file a Second Amended Counterclaim and Answer in this action; and

WHEREAS Plaintiff Bardy Diagnostics, Inc. does not oppose that motion;

IT IS HEREBY ORDERED that Defendant's motion for leave to file a Second Amended Counterclaim and Answer is GRANTED.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

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The Honorable Joshua D. Wolson

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2025, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused to be served copies of the foregoing document on April 25, 2025, upon the following in the manner indicated:

Philip A. Rovner, Esquire  
Andrew M. Moshos, Esquire  
POTTER ANDERSON & CORROON LLP  
P.O. Box 951  
Wilmington, DE 19899  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

Jeffrey R. Gargano, Esquire  
Devon C. Beane, Esquire  
Melissa M. Haulcomb, Esquire  
A. Rebekah Hill, Esquire  
Jared R. Lund, Esquire  
K& L GATES LLP  
70 West Madison Street, Suite 3300  
Chicago, IL 60602  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

Erik J. Halverson, Esquire  
K& L GATES LLP  
4 Embarcadero Center, Suite 1200  
San Francisco, CA 94111  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

*/s/ Lucinda C. Cucuzzella*

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Lucinda C. Cucuzzella (#3491)